cause and excuse and therefore not a proper case for reference to the Industrial Court. The facts of the instant case were nowhere nearly similar to those of the two cases. In the result we would dismiss this appeal with costs. Deposit of the second appellant to account of taxed costs.

Appeal dismissed.

Solicitors: *Albar Zulkifly & Yap; Lobo & Associates.*

Reported by *Prof Ahmad Ibrahim*

Wong Yew Ming v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL REFERENCE NO 1 OF 1987
HASHIM YEOP A SANI CJ (MALAYA), GUNN CHIT TUAN AND JEMURI SERJAN SCJJ
11 OCTOBER 1990

Criminal Law — Dangerous drugs — Trafficking in — Evidence to show that on previous occasions accused had sold dangerous drugs — System — Whether admissible — Dangerous Drugs Act 1952, s 39B(1)

Evidence — Conduct of accused on previous occasions — Charge of trafficking in dangerous drug — Whether evidence to show that on previous occasions accused had sold dangerous drugs admissible — System — Evidence Act 1950, s 15

In this case the accused had been charged with trafficking in dangerous drugs. Evidence had been given to show that the accused had in his possession drugs exceeding the amount which involved the presumption of trafficking under the Dangerous Drugs Act 1952. In addition the prosecution called additional evidence from two self-confessed drug addicts that they had bought drugs from the accused. The accused was convicted and sentenced to life imprisonment and six strokes of the rotan. The learned president of the sessions court held that the additional evidence called by the prosecution was admissible to show system and that the accused is known to have been dealing with drugs. An appeal to the High Court was dismissed. It was then sought to refer a question of law of public interest to the Supreme Court as follows: 'Whether in a trial in which the accused is charged for trafficking in respect of a particular quantity of dangerous drugs, to wit, heroin, at a particular place and time, evidence may be admitted that on previous occasions he had sold dangerous drugs, although such evidence is prejudicial to the accused.'

Held, answering the question in the affirmative:
When the statutory amount of drugs is proved to be in the possession of any person the presumption is invoked and the person shall be presumed, until the contrary is proved, to be trafficking in the drugs. Under the Dangerous Drugs Act 1952 possession of the statutory amount of drugs is trafficking. The additional evidence was relevant to show knowledge and that the possession of the drugs was not accidental.

[Bahasa Malaysia summary

Di dalam kes ini yang dituduh telah dituduh mengedar dadah merbahaya. Keterangan telah diberi menunjukkan yang dituduh telah memiliki dadah melebihi amaun yang menimbulkan anggapan pengedaran di bawah Akta Dadah Berbahaya 1952. Juga pihak pendakwa telah mengemukakan keterangan tambahan dari dua penagih dadah bahawa mereka telah membeli dadah daripada yang dituduh. Yang dituduh telah disabitkan kesalahan itu dan telah dihukum penjara seumur hidup dan enam pukulan rotan. Yang arif yang di pertua mahkamah sesyen berpendapat keterangan tambahan yang dikemukakan oleh pihak pendakwa boleh diterima untuk menunjuk kan sistem dan bahawa orang yang dituduh diketahui menjual dadah. Rayuan kepada Mahkamah Tinggi telah ditolak. Permohonan kemudiannya dibuat untuk merujuk soal undang-undang yang mempunyai kepentingan awam kepada Mahkamah Agung seperti berikut: 'Samada di dalam perbicaraan di mana orang yang dituduh mengedar sejumlah tertentu dadah merbahaya iaitu heroin, di tempat dan masa tertentu, keterangan boleh diterima bahawa di masa-masa sebelum itu ia telah menjual dadah merbahaya, sungguhpun keterangan itu memudaratkan orang yang dituduh.'

Diputuskan, mengiakan soalan itu:
Apabila jumlah dadah yang ditetapkan oleh statut telah dibukti berada di dalam milik mana-mana orang, anggapan telah ditimbulkan dan orang itu adalah dianggap, hingga dibuktikan sebaliknya, mengedar dadah itu. Di bawah Akta Dadah Berbahaya 1952 pemilikan jumlah dadah yang ditetapkan oleh statut adalah pengedaran. Keterangan tambahan adalah relevan untuk menunjukkan kesedaran dan bahawa pemilikan dadah itu bukan tidak sengaja.]

Cases referred to
1 *Poh Soh Har & Anor* v *PP* [1977] 2 MLJ 126 (distd)
2 *Teh Geok Hock* v *PP* [1989] 3 MLJ 162 (refd)

Legislation referred to
Dangerous Drugs Act 1952 ss 2, 37, 39B(1)
Evidence Act 1950 s 15

Appeal from: Criminal Appeal No 106/1983 (High Court, Ipoh)

R Rajasingam (*K Chandra* with him) for the applicant.
Mohd Yusof bin Hj Zainal Abidin (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The following question of law of public interest was posed before this court, namely:

> Whether in a trial in which an accused is charged for trafficking in respect of a particular quantity of dangerous drug, to wit, heroin, at a particular place and time, evidence may be admitted that on previous occasions he had sold dangerous drugs, although such evidence is prejudicial to the accused.

After hearing arguments we answered this question in the affirmative.

The applicant was originally charged under s 39B(1) of the Dangerous Drugs Act 1952 ('the Act') together with another co-accused, his wife. The charge stated that the accused on 3 August 1982 at about 1.30pm at a house no 22, Persiaran Cempaka Sari 19, Taman Cempaka, Ipoh, Perak did traffic in dangerous drug, to

wit, heroin weighing about 250g in contravention of the said section of the Act. At the close of the prosecution case the co-accused was acquitted and the applicant was called upon to enter his defence. At the conclusion of the trial the applicant was convicted and sentenced to life imprisonment and six strokes of the rotan. His appeal to the High Court was dismissed.

Section 37 of the Act provides for the presumption of trafficking. At the date stated in the charge the presumption would apply in respect of any person found in possession of 100g or more of heroin. The provision was subsequently amended by Act 553 which took effect on 14 April 1983. Act 553 also repealed the discretion of the court to impose a sentence of life imprisonment under s 39B(2) of the Act.

At the date stated in the charge and at the time of the trial the amount of heroin found by the trial court to be in the applicant's possession in fact exceeded the amount which invoked the presumption of trafficking under the Act. Notwithstanding the presumption the prosecution sought to bring home the charge against the applicant by calling additional evidence from two self-confessed drug addicts, namely, PW8 and PW9. PW8's evidence is the relevant evidence in this application because it related to the charge against the applicant.

Part of the evidence of PW8 which is the subject matter of the question reads as appears in the appeal record as follows:

> I paid $45 for a straw tube from first accused. I did not see where he got the drugs. I was in the house and I saw him go out of the house to get the drugs. He went out through the main door; but was within the compound of the house. He came back not more than five minutes later. He handed over, the drugs to me.

Further down in his evidence he also said:

> Each time I bought a straw tube for $45. First accused handed me the drugs on every occasion. I handed him the money. I did not buy any drugs from second accused. Over these 20 times, I did not see where first accused got the drugs from.

The learned president of the sessions court who convicted the applicant referred to PW8's evidence in his grounds of judgment as follows:

> The prosecution, even with the evidence as summarized above, had made out a prima facie case against the accused. It went further to call two self-confessed drug addicts Cheong Yew Kong (PW8) and Kok Chuan Leong (PW9). PW9 bought the drugs from second accused (female) but did not see where she got the drugs from; first accused (male) was in the hall at that time. PW8 said he bought half a straw tube of drugs from first accused almost every day for about twenty (20) occasions and he paid $45 on each occasion. PW8 identified the weighing scale P29 as the one which he had bought from a friend, Simon, in 1976.

Further down in his grounds of judgment the learned president dealt with the law on the evidence of PW8 as follows:

> Trafficking in drugs is not a matter that goes on for one day only; it can go on for weeks or months. On days previous to 3 August 1982, smaller quantities were trafficked but on that day itself, 117.9g were available for trafficking. Section 15 of the Evidence Act 1950 reads as follows:
>
> > 'When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that the act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.'
>
> Section 37(da) of the DDA presumed a person found in possession of more than 100g of drugs to be trafficking in drugs.

When the case went on appeal to the High Court a number of issues were raised before the learned judge and on the question of evidence of PW8 and PW9 the learned judge ruled as follows in his grounds of decision:

> With respect I am of the view that the evidence of PW8 and PW9 is admissible. The evidence does not show a bad character. It shows system. It shows that the accused is known to have been dealing with drugs.

Further down in his grounds of decison the learned judge concluded that the evidence of PW8 was relevant to prove that the accused had committed the offence of trafficking and therefore his evidence was admissible.

As correctly pointed out by the learned president the prosecution could have relied solely on the weight of the heroin found in the possession of the applicant to invoke the presumption of trafficking under the Act. But the prosecution went further. It is probable that the prosecution was not sure that the court would make a finding that the applicant was in possession of the drug as a whole because the drug was found in eight separate holes — six in the compound of the house and two outside the fence. In these holes were found rolled up plastic packets of the drug buried. It was perhaps a novel way of keeping the drug in separate compartments, each with an amount below the statutory amount which would have invoked the presumption of trafficking in law.

In the context of the Act PW8's evidence is in our view clearly admissible. The prosecution wanted to show that on previous occasions the applicant had sold drugs and therefore had been trafficking in drugs. In our law when the statutory amount of drug is proved to be in the possession of any person the presumption is invoked and the person shall be presumed until the contrary is proved, 'to be trafficking' in the said drug. Under the Act possession of the statutory amount of drug is trafficking. PW8's evidence was relevant to show knowl-

edge and that the possession of the drug by the applicant was not accidental.

A Singapore case, *Poh Soh Har & Anor* v *PP*[1] dealt with somewhat similar type of evidence. But we would like to express the following caution when referring to that case. First, the definition of 'trafficking' under s 2 of the Singapore Misuse of Drugs Act 1973 is differently worded from the definition of 'trafficking' in our Act. Section 2 of the Singapore Act deals with specific activities and the word 'means' in the definition there certainly restricts the scope of the definition. The definition of 'trafficking' in our Act is very wide and the definition begins with the words 'trafficking includes'. See also *Teh Geok Hock* v *PP*[2] at p 163 on the definition of 'trafficking' . Secondly, the Singapore Act (referred to in *Poh Soh Har*[1]) provided that any person proved to have had in his possession more than the statutory amount of the drug shall, until the contrary is proved, be presumed not to be 'trafficking' but to have had such drug in his possession 'for the purpose of trafficking' therein.

In this case the evidence of PW8 is admissible not because it tends to show that a person committing one offence is likely to commit another but to show knowledge or intention of the applicant and that the possesion is not accidental.

Accordingly the answer to the question posed must be in the affirmative.

Order accordingly.

Solicitors: *K Chandra & Co*

Reported by *Prof Ahmad Ibrahim*

Guthrie Sdn Bhd v Trans-Malaysian Leasing Corp Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 520 OF 1988
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED AZMI AND AJAIB SINGH SCJJ
11 OCTOBER 1990

Contract — Hire -purchase — Whether property passed

Evidence — No reasons given why persons not called to give evidence — Presumption that evidence not favourable — Evidence Act 1950, s 114(g)

In this case the appellants were the sole agents and distributors of two heavy machines. The respondents claimed that they had purchased the machines from Uni-East as dealers and they had hired the machines to Zarad. The machines were registered in the name of Zarad with the ownership claim endorsed for the respondents in the log books of the vehicles. The appellants had refused to release the machines to the respondents claiming that they had not been paid and therefore had an unpaid seller's lien. The respondents had claimed for the return of the two machines or their value. The defence of the appellants was that Uni-East was not acting as their agents and had no authority to represent themselves as agents. They counterclaimed for general damages for conversion. The learned trial judge allowed the claim of the respondents and dismissed the counterclaim of the appellants. He also held that certain persons had not been called to give evidence for the appellants and no reason had been given for the failure to do so. He invoked s 114(g) of the Evidence Act 1950 against the appellants. The appellants appealed.

Held, dismissing the appeal:

(1) The surrounding circumstances of the case clearly indicate that the property was intended to pass at the time of contract between the respondents and Zarad. It was not disputed that Zarad wanted to raise finance from the respondents on hire-purchase. The relevant documents were handed for that reason and to obtain registration.

(2) The learned trial judge was quite correct in the circumstances to invoke s 114(g) of the Evidence Act 1950 against the appellants.

[Bahasa Malaysia summary

Di dalam kes ini perayu adalah ejen tunggal dan pengedar dua mesin berat. Responden mendakwa mereka telah membeli mesin itu dari Uni-East sebagai peniaganya dan mereka telah menyewa mesin itu kepada Zarad. Mesin itu telah didaftar atas nama Zarad dengan catatan dibuat menunjukkan tuntutan kepunyaan oleh responden di dalam buku daftar mesin itu. Perayu telah enggan melepaskan mesin itu kepada responden dan mereka mendakwa mereka belum dibayar harganya dan mereka mempunyai lien penjual yang belum dibayar. Responden memohon pengembalian mesin itu atau nilainya. Pembelaan perayu ialah Uni-East tidak bertindak sebagai ejen mereka dan tidak berhak mengatakan mereka menjadi ejen. Mereka menuntut balas gantirugi umum untuk salah guna. Hakim yang arif telah membenarkan tuntutan responden dan menolak tuntutan balas perayu. Beliau juga berpendapat beberapa orang yang penting telah tidak dipanggil memberi keterangan mereka bagi pihak perayu dan tiada sebab diberi untuk kegagalan ini. Beliau menggunakan s 114(g) Akta Keterangan 1950 terhadap perayu. Perayu telah membuat rayuan.

Diputuskan, menolak rayuan itu:

(1) Keadaan sekitar kes ini menunjukkan bahawa hak milik telah diniatkan berpindah pada masa kontrak itu antara responden dan Zarad. Tidak dinafikan bahawa Zarad ingin mendapati bantuan kewangan daripada responden melalui sewa beli. Dokumen yang berkaitan telah diserahkan untuk maksud itu dan untuk pendaftaran.

(2) Hakim yang arif yang membicarakan kes itu tidak silap di dalam keadaan kes ini menggunakan s 114(g) Akta Keterangan 1950 terhadap perayu.]

Legislation referred to
Evidence Act 1950 s 114(g)

Appeal from: Civil Suit No C1139 of 1980 (High Court, Kuala Lumpur)

Matthias Chang for the appellants.
RR Sethu for the respondents.

Cur Adv Vult